

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TAMMY BURSE,

Petitioner,

Civil Case No. 05-73677

Honorable Patrick J. Duggan

v.

CLARICE STOVALL,

Respondent,

_____ /

ORDER DENYING CERTIFICATE OF APPEALABILITY

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on October 4, 2007.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Petitioner Tammy Burse filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, which this Court subsequently denied on April 14, 2007. On May 4, 2007, Petitioner filed a notice of appeal and an application to proceed on appeal *in forma pauperis*. Petitioner, however, did not request a certificate of appealability from this Court. 28 U.S.C. § 2253. The Sixth Circuit therefore issued an order on September 24, 2007, holding Petitioner's appeal in abeyance and remanding the matter to this Court "for the sole purpose of determining whether to grant or deny a certificate of appealability."

Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the Supreme Court has stated:

“[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner] or that the questions are ‘adequate to deserve encouragement to proceed further.’”

Barefoot v. Estelle, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4 (1983)(quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D. Ga. 1980)). As the Supreme Court more recently stated, when a district court denies a habeas petition on the merits of the claims, a certificate may issue if the petitioner demonstrates that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

This Court dismissed Petitioner’s application for a writ of habeas on its merits. The Court concludes that reasonable jurists would not find its assessment of Petitioner’s claims debatable or wrong.

Accordingly, the Court holds that Petitioner is not entitled to a certificate of appealability and DENIES the request.

SO ORDERED.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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